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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 160617541-6541-01]

RIN 0648-BG15

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement Amendment 47 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP) and to make minor clarifications to regulations implementing the Crab FMP. This proposed rule addresses how individual processing quota (IPQ) use caps apply to the Bering Sea *Chionoecetes bairdi* Tanner crab fisheries: the eastern *C. bairdi* Tanner (EBT) and the western *C. bairdi* Tanner (WBT). This proposed rule would exempt EBT and WBT IPQ crab that is custom processed at a facility through contractual arrangements with the processing facility owners from being applied against the IPQ use cap of the processing facility owners, thereby allowing a facility to process more crab without triggering the IPQ use cap. This proposed exemption is necessary to allow all of the EBT and WBT Class A individual fishing quota crab to be processed at the facilities currently processing EBT and WBT crab, and would have significant positive economic

effects on the fishermen, processors, and communities that participate in the EBT and WBT fisheries. This proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Crab FMP, and other applicable law.

DATES: Submit comments on or before [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2016-0081, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2016-0081* click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 47 to the Crab FMP, the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) (collectively referred to as the “Analysis”), and the Categorical Exclusion prepared for this proposed action are available from <http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

The Environmental Impact Statement (Program EIS), RIR (Program RIR), Final Regulatory Flexibility Analysis (Program FRFA), and Social Impact Assessment prepared for the Crab Rationalization Program are available from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Keeley Kent, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the king and Tanner crab fisheries in the U.S. exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the Crab FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the Crab FMP appear at 50 CFR parts 600 and 680.

A notice of availability for Amendment 47 was published in the **Federal Register** on September 13, 2016; 81 FR 62850. Comment on Amendment 47 is invited through November 14, 2016. All relevant written comments received by the end of the comment period, whether specifically directed to the FMP amendment, this proposed rule, or both,

will be considered in the approval/disapproval decision for Amendment 47 and addressed in the response to comments in the final rule.

This proposed rule would modify regulations that specify how IPQ use caps apply to IPQ issued for EBT and WBT crab fisheries. The following sections describe 1) the BSAI crab fisheries under the Crab Rationalization Program (Program), 2) IPQ use caps and custom processing arrangements, 3) IPQ use caps applicable to the EBT and WBT crab fisheries, and 4) this proposed rule and the anticipated effects of the action.

The BSAI Crab Fisheries under the Program

The Program was implemented on March 2, 2005 (70 FR 10174). The Program established a limited access privilege program for nine crab fisheries in the BSAI, including the EBT and WBT crab fisheries, and assigned quota share (QS) to persons based on their historic participation in one or more of those nine BSAI crab fisheries during a specific period. Under the Program, NMFS issued four types of QS: catcher vessel owner (CVO) QS was assigned to holders of License Limitation Program (LLP) licenses who delivered their catch to shoreside crab processors or to stationary floating crab processors; catcher/processor vessel owner QS was assigned to LLP license holders who harvested and processed their catch at sea; catcher/processor crew QS was issued to captains and crew on board catcher/processor vessels; and catcher vessel crew QS was issued to captains and crew on board catcher vessels. Each year, a person who holds QS may receive an exclusive harvest privilege for a portion of the annual total allowable catch, called individual fishing quota (IFQ).

NMFS also issued processor quota share (PQS) under the Program. Each year, PQS yields an exclusive privilege to process a portion of the IFQ in each of the nine

BSAI crab fisheries. This annual exclusive processing privilege is called individual processor quota (IPQ). Only a portion of the QS issued yields IFQ that is required to be delivered to a processor with IPQ. QS derived from deliveries made by catcher vessel owners (i.e., CVO QS) is subject to designation as either Class A IFQ or Class B IFQ. Ninety percent of the IFQ derived from CVO QS is designated as Class A IFQ, and the remaining 10 percent is designated as Class B IFQ. Class A IFQ must be matched and delivered to a processor with IPQ. Class B IFQ is not required to be delivered to a processor holding IPQ for that fishery. Each year there is a one-to-one match of the total pounds of Class A IFQ with the total pounds of IPQ issued in each crab fishery.

NMFS issued QS and PQS for the EBT and WBT crab fisheries. Unlike the QS and PQS issued for most other Program fisheries, the QS and PQS issued for the EBT and WBT crab fisheries are not subject to regional delivery and processing requirements, commonly known as regionalization. Therefore, the Class A IFQ that results from EBT and WBT QS, and the IPQ that results from EBT and WBT PQS, can be delivered to, and processed at, any otherwise eligible processing facility.

In addition, the PQS and resulting IPQ issued for the EBT and WBT crab fisheries are not subject to right-of-first-refusal (ROFR) provisions included in the Program. The ROFR provisions provide certain communities with an option to purchase PQS or IPQ that would otherwise be used outside of the community holding the ROFR.

Because the EBT and WBT crab fisheries are not subject to regionalization or ROFR provisions, crab harvested under a Class A IFQ permit in these fisheries can be delivered to processors in a broad geographic area more easily than crab harvested under Class A IFQ permits in Program fisheries subject to regionalization and ROFR

provisions. The rationale for exempting the EBT and WBT crab fisheries from regionalization and ROFR provisions is described in the Program EIS (see **ADDRESSES**), and in the final rule implementing the Program (70 FR 10174, March 2, 2005).

IPQ Use Caps and Custom Processing Arrangements

When the Council recommended the Program, it expressed concern about the potential for excessive consolidation of QS and PQS, in which too few persons control all of the QS or PQS and the resulting annual IFQ and IPQ. The Council determined that excessive consolidation could have adverse effects on crab markets, price setting negotiations between harvesters and processors, employment opportunities for harvesting and processing crew, tax revenue to communities in which crab are landed, and other factors considered and described in the Program EIS. To address these concerns, the Program limits the amount of QS that a person can hold (i.e., own), the amount of IFQ that a person can use, and the amount of IFQ that can be used on board a vessel. Similarly, the Program limits the amount of PQS that a person can hold, the amount of IPQ that a person can use, and the amount of IPQ that can be processed at a given facility. These limits are commonly referred to as use caps.

In most of the nine BSAI crab fisheries under the Program, including the Tanner crab fisheries, a person is limited to holding no more than 30 percent of the PQS initially issued in the fishery, and to using no more than the amount of IPQ resulting from 30 percent of the initially issued PQS in a given fishery, with a limited exemption for persons receiving more than 30 percent of the initially issued PQS. No person in the EBT or WBT crab fisheries received in excess of 30 percent of the initially issued PQS

(see Section 2.5.2 of the Analysis). Therefore, no person may use an amount of EBT or WBT IPQ greater than an amount resulting from 30 percent of the initially issued EBT or WBT PQS. The rationale for the IPQ use caps is described in the Program EIS and the final rule implementing the Program (70 FR 10174, March 2, 2005).

The Program is designed to minimize the potential for a person to evade the PQS ownership and IPQ use caps through corporate affiliations or other legal relationships. To accomplish this, § 680.7(a)(7) prohibits an IPQ holder from using more IPQ than the maximum amount of IPQ that may be held by that person. Section 680.7(a)(7) also provides that IPQ use by a person is calculated by summing the total amount of IPQ that is held by that person and IPQ held by other persons who are affiliated with that person. The term “affiliation” is defined in § 680.2 as a relationship between two or more entities where one entity directly or indirectly owns or controls 10 percent or more of the other entity. Additional terms used in the definition of “affiliation” are described in § 680.2.

Under § 680.7(a)(7), any IPQ crab that is “custom processed” at a facility an IPQ holder owns will be applied against the IPQ use cap of the facility owner, unless specifically exempted by § 680.42(b)(7). A custom processing arrangement exists when an IPQ holder has a contract with the owners of a processing facility to have his or her crab processed at that facility, and the IPQ holder does not have an ownership interest in that processing facility or is otherwise affiliated with the owners of that processing facility. In custom processing arrangements, the IPQ holder contracts with a facility operator to have the IPQ crab processed according to that IPQ holder’s specifications. Custom processing arrangements typically occur when an IPQ holder does not own a

shoreside processing facility or cannot economically operate a stationary floating crab processor.

Shortly after implementation of the Program, the Council submitted and NMFS approved Amendment 27 to the Crab FMP (74 FR 25449, May 28, 2009). Amendment 27 was designed to improve operational efficiencies in crab fisheries with historically low total allowable catches or that occur in more remote regions by exempting certain IPQ crab processed under a custom processing arrangement from applying against the IPQ use cap of the owner of the facility at which IPQ crab are custom processed. For ease of reference, this preamble refers to this exemption as a “custom processing arrangement exemption.” NMFS refers the reader to the preamble to the final rule implementing Amendment 27 to the Crab FMP for additional information regarding the rationale for custom processing arrangement exemptions in specific BSAI crab fisheries. Section 680.42(b)(7) describes the three requirements that must be met for the custom processing arrangement exemption to apply.

First, the custom processing arrangement exemption applies to IPQ issued in six BSAI crab fisheries. Section 680.42(b)(7)(ii)(A) lists the six BSAI crab fisheries for which the custom processing arrangement exemption applies—Bering Sea *C. opilio* with a North Region designation, Eastern Aleutian Islands golden king crab, Pribilof Islands blue and red king crab, Saint Matthew blue king crab, Western Aleutian Islands golden king crab processed west of 174° W. long., and Western Aleutian Islands red king crab. As described later in this preamble, the custom processing arrangement exemption implemented under Amendment 27 does not apply to custom processing arrangements in the EBT and WBT crab fisheries.

Second, the custom processing arrangement exemption applies provided there is no affiliation between the person whose IPQ crab is processed at that facility and the IPQ holders who own that facility. As noted earlier, “affiliation” is defined under § 680.2 as a relationship between two or more entities where one directly or indirectly owns or controls 10 percent or more of the other entity. Under § 680.42(b)(7)(i), NMFS does not count IPQ crab that are custom processed at a facility owned by an IPQ holder against the IPQ use cap of the owner of the processing facility as long as the person whose IPQ crab is custom processed at that facility does not directly or indirectly own or control 10 percent or more of the entity that owns the processing facility. In such a case, NMFS credits a person who holds IPQ and who owns a processing facility only with the amount of IPQ crab used by that person, or any affiliates of that person, when calculating IPQ use caps. In sum, these regulations allow processing facility owners who also hold IPQ to use their facility, or facilities, to establish custom processing arrangements with other IPQ holders to process more crab without exceeding IPQ use caps, thereby increasing the amount of crab available for processing at the facility (i.e., throughput) and providing a more economically viable processing operation. These regulations effectively allow more than 30 percent of the IPQ for the six BSAI crab fisheries to be processed at a facility if there is no affiliation between the person whose IPQ crab is processed at that facility and the IPQ holders who own that facility.

Third, a custom processing arrangement exemption applies provided the facility at which the IPQ crab are custom processed meets specific location requirements. Under § 680.42(b)(7)(ii)(B), IPQ crab that are custom processed do not count against the IPQ use cap of persons owning the facility if the facility is located within the boundaries of a

home rule, first class, or second class city in the State of Alaska in existence on the effective date of regulations implementing Amendment 27 (June 29, 2009) and is either 1) a shoreside crab processor or 2) a stationary floating crab processor that is located within a harbor and moored at a dock, docking facility, or other permanent mooring buoy, with specific provisions applicable to the City of Atka. The specific provisions applicable to facilities operating within the City of Atka are not directly relevant to the EBT and WBT crab fisheries and this proposed rule, and are not addressed further. Additional information on the location requirements for facilities is found in the preamble to the final rule implementing Amendment 27 (74 FR 25449, May 28, 2009).

Finally, § 680.7(a)(8) prohibits a shoreside crab processor or a stationary floating crab processor in which no IPQ holder has a 10 percent or greater ownership interest in the processing facility from receiving more than 30 percent of the IPQ issued for a particular crab fishery. However, as with facilities that have an IPQ holder with a 10 percent or greater ownership interest, IPQ crab processed at these facilities under a custom processing arrangement does not apply against the limit on the maximum amount of IPQ crab that can be processed at such a facility.

Regulations implementing Amendment 27 also created a custom processing exemption for IPQ crab subject to ROFR provisions (see § 680.42(b)(7)(ii)(C) and Section 2.5.2.1 of the Analysis). However, as noted earlier in this preamble, ROFR requirements do not apply to EBT and WBT crab and modifications to IPQ use cap calculations for IPQ crab subject to ROFR provisions that were made by Amendment 27 are not described further in this proposed rule. As a result of Amendment 27, EBT and WBT crab are the only Program fisheries in which all IPQ crab apply to the IPQ use caps

of the facility owners, even though the processing of EBT and WBT is done by the same companies and facilities that process all other Program crab fisheries, which have custom processing arrangement exemptions and certain exemptions for IPQ crab subject to ROFR.

IPQ Use Caps Applicable to the EBT and WBT Crab Fisheries

As noted earlier, the EBT and WBT crab fisheries are not crab fisheries to which the custom processing arrangement exemption applies, and EBT and WBT IPQ crab that are processed under a custom processing arrangement apply against a person's IPQ use cap if that person owns the facility (i.e., has a 10 percent or greater direct or indirect ownership interest) at which those IPQ crab are custom processed. Given that the EBT and WBT IPQ use caps are set at 30 percent, a minimum of four persons who are not affiliated with each other (i.e., a 10 percent or greater direct or indirect ownership interest) must receive and process EBT or WBT IPQ crab to ensure that all Class A IFQ can be delivered and processed with no person exceeding the IPQ use caps.

When the Council recommended and NMFS implemented Amendment 27, the Council and NMFS did not create a custom processing arrangement for the EBT and WBT crab fisheries. The preamble to the proposed rule implementing Amendment 27 explains that the Council and NMFS did not recommend a custom processing arrangement exemption for EBT and WBT IPQ crab because EBT and WBT crab QS do not have regional landing requirements and therefore can be effectively delivered to any otherwise eligible processor with matching IPQ in any location (73 FR 54351, September 19, 2008). Table 2-5 in Section 2.6.1 of the Analysis shows that during the 2006/2007 crab fishing year, there were six processing facilities owned by five unaffiliated

processors receiving EBT Class A IFQ crab, and there were five processing facilities owned by four unaffiliated processors receiving WBT Class A IFQ crab. Since then, there has been consolidation in the BSAI crab processing sector, thus reducing the number of processing facilities that are unaffiliated with one another. This consolidation has occurred through the merger of two companies and the recent exit of a company from the fishery. Additionally, PQS has been purchased by entities that do not own or operate processing facilities. As Section 2.6 of the Analysis describes (see **ADDRESSES**), for the first year since the start of the Program, there were only three unique unaffiliated persons (processors) who received EBT and WBT IPQ crab at their facilities during the 2015/2016 crab fishing year. These three processors are the Maruha-Nichiro Corporation, which includes Alyeska Seafoods, Peter Pan Seafoods, and Westward Seafoods; Trident Seafoods; and Unisea Seafoods. Information in section 2.6 of the Analysis explains that these three processors also own and operate all of the facilities that processed EBT and WBT IPQ crab during the 2015/2016 crab fishing year.

Emergency Rule

At its December 2015 meeting, the Council determined that the unforeseen and recent exit of one Tanner crab processor from processing caused the remaining processors currently operating in the Bering Sea region to be constrained by IPQ use caps in the Tanner crab fisheries. With the loss of this unique, unaffiliated processor, less than the required minimum of four unique and unaffiliated processors remain active in the EBT and WBT crab fisheries; therefore, only 90 percent of the Class A IFQ could have been delivered to, and only 90 percent of the IPQ could have been used at, facilities owned and operated by the remaining processors—Maruha-Nichiro Corporation, Trident

Seafoods, and Unisea Seafoods—without exceeding the IPQ use caps. The remaining 10 percent of the EBT Class A IFQ/IPQ and WBT Class A IFQ/IPQ would have had to be delivered to processing facilities unaffiliated with these three processors, or left unharvested (see Section 2.6.1 of the Analysis for more detail). Based on these conditions and the low probability that a new, unaffiliated processor would enter the fishery at that time, the Council voted to request that NMFS promulgate an emergency rule to temporarily allow a custom processing exemption to the IPQ use caps for the 2015/2016 crab fishing year in the EBT and WBT crab fisheries. Without emergency action, 10 percent of the Tanner crab Class A IFQ likely would have been stranded (826,322 pounds of EBT and 615,489 pounds of WBT for the 2015/2016 crab fishing year).

The Council and NMFS considered a range of factors before the Council recommended and NMFS implemented the emergency rule. First, the Council and NMFS considered whether developing or using an alternative shorebased processing facility in the Bering Sea that was not affiliated with the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods would be a feasible processing option for the remainder of the 2015/2016 crab fishing year. At the time, there was no unaffiliated company that expressed interest in entering the fishery. Additionally, the Council and NMFS determined that the regulatory closure date for the EBT and WBT crab fisheries provided very limited time for IPQ holders to find an alternative processing facility.

Second, the Council and NMFS also considered whether alternative shoreside processing facilities not affiliated with the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods, such as facilities in Kodiak, AK, could be used. The

Council and NMFS concluded that transporting EBT or WBT crab to those locations would result in longer trips with increased fuel and operating costs for harvesters, result in lost fishing days while the crab are being transported, and increase the potential for deadloss (death) of crab.

Third, the Council and NMFS considered whether the use of a stationary floating crab processor would be a feasible processing option for the remainder of the 2015/2016 crab fishing year. At the time, there was no unaffiliated company that expressed interest in entering the fishery. The Council and NMFS concluded that establishing a contract with a stationary floating crab processor, outfitting the vessel, and establishing a market for delivered Class A IFQ EBT and WBT crab in the short amount of time available before the end of the fisheries during the 2015/2016 crab fishing year would present many of the same logistical challenges that are present for alternative shoreside processing facilities. These factors made it highly unlikely that a new, unaffiliated processor would enter the fishery using a floating processor.

Finally, the Council and NMFS determined that any IPQ holder hoping to secure an alternative shoreside processing facility or a stationary floating crab processor during the 2015/2016 crab fishing year would have had very little negotiating leverage with any unaffiliated processing facility given the amount of time remaining for the EBT and WBT crab season. That lack of negotiating leverage in establishing delivery terms and conditions could impose additional costs on IPQ holders and harvesters that may make such deliveries uneconomic. The Council and NMFS concluded that there did not appear to be any viable delivery options available for 10 percent of the EBT and WBT Class A IFQ during the remainder of the 2015/2016 crab fishing year.

On January 26, 2016 (81 FR 4206), NMFS published an emergency rule that temporarily exempted EBT and WBT IPQ crab that was custom processed at a facility through contractual arrangements with the facility owners from being applied against the IPQ use cap of the facility owners. The temporary rule expired on June 30, 2016. Additional detail on the factors considered by the Council and NMFS are described in the preamble to the emergency rule (January 26, 2016, 81 FR 4206).

This Proposed Rule and its Anticipated Effects

At its June 2016 meeting, the Council voted to recommend Amendment 47, which would create a custom processing arrangement exemption for EBT and WBT crab. The Council determined that all of the factors that supported their recommendation for an emergency rule for the 2015/2016 crab fishing year continue to exist. The Council recognized that consolidation within the Tanner crab processing sector has constrained the ability of the processing sector to process all of the EBT and WBT Class A IFQ crab without exceeding the IPQ use caps. The Council determined that without additional unique and unaffiliated processing facilities entering the Tanner crab processing sector for the 2016/2017 crab fishing year or beyond, there is a significant risk that the portion of the Tanner crab allocation in excess of the caps would not be processed. Without the ability to have all EBT and WBT Class A IFQ processed, that portion of the Tanner crab allocation in excess of the caps would likely go unharvested because sufficient processing facilities do not exist in the Bering Sea region.

The Council also acknowledged that while additional consolidation within the EBT and WBT processing sector could occur under Amendment 47, the Council does not expect additional consolidation to occur for reasons explained below. NMFS also did not

intend for the IPQ use caps to strand a portion of the fishery, however, without the proposed exemption, harvesters, processors, and communities would lose the potential benefits from the stranded portion of crab. The management objective of this action is to provide a custom processing arrangement exemption for the EBT and WBT crab fisheries so that the full Tanner crab allocation can be harvested and processed.

Proposed Regulations to Implement Amendment 47

This proposed rule would modify § 680.42(b)(7)(ii)(A) by adding EBT and WBT IPQ crab to the list of BSAI crab fisheries already receiving a custom processing arrangement exemption. This would allow EBT and WBT IPQ crab received for custom processing by the three processors currently operating in these fisheries to qualify for a custom processing arrangement exemption and not apply against the IPQ use caps for these processors. With this proposed rule, all EBT and WBT IPQ crab received under custom processing arrangements at the facilities owned by the three existing EBT and WBT processors (Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods) would not be counted against the IPQ use cap of the facility or the facility owners. The custom processing arrangement exemption would allow these processors to custom process crab for unaffiliated IPQ holders who have custom processing arrangements with the processors, thereby allowing harvesters to fully harvest and deliver their EBT and WBT Class A IFQ crab to IPQ holders with a custom processing arrangement at facilities operating in these fisheries.

The anticipated effects of this proposed rule include allowing the full processing of all EBT and WBT Class A IFQ crab and the associated economic and social benefits of that processing activity for harvesters, the existing Tanner crab processors, and the

communities where processing facilities are located. These communities include Akutan, Dutch Harbor/Unalaska, King Cove, and Saint Paul. The proposed rule would allow all of the Tanner crab Class A IFQ to be harvested and processed by existing processors and thus avoid the adverse economic and social impacts created by the lack of adequate processing capacity that would otherwise result if the EBT and WBT crab fisheries could not be fully processed. Ten percent of the EBT and WBT Class A IFQ crab represents approximately \$3.4 million in ex-vessel value and \$4.95 million in first wholesale value based on estimated ex-vessel and first wholesale values of EBT and WBT crab in the 2015/2016 crab fishing year (see Section 2.9 of the Analysis for additional detail).

The Council and NMFS considered whether this proposed rule could result in further consolidation of Tanner crab processing to fewer facilities than currently operating. Under this proposed rule, there would be no regulatory barriers for processing companies to further consolidate processing facilities for Tanner crab. Since EBT and WBT crab are not subject to regionalization or ROFR, there would be no regulatory limitations preventing all of the EBT and WBT IPQ crab from being processed by one company at one facility.

The Council and NMFS determined that operational factors make it unlikely that additional consolidation will occur. First, the extent to which the proposed exemption allows further consolidation depends on whether processors choose to enter custom processing arrangements with IPQ holders. The choice to enter those arrangements would depend largely on the benefit to the IPQ holder arising from using the IPQ at the holder's own facility or custom processing the IPQ at a plant unaffiliated with the IPQ holder. Collectively, the three companies and their facilities that process Tanner crab

have substantial holdings of IPQ (see Table 2-3 of the Analysis). It is likely more economical for these companies to process the IPQ they hold at their facilities rather than negotiate a custom processing agreement with another processor, which would reduce the likelihood of further consolidation.

Second, the extent of further consolidation depends on the business decisions that participants make regarding their participation in other crab fisheries, such as Bristol Bay red king crab and Bering Sea *opilio*. None of the current Tanner crab processors only process Tanner crab; all companies and facilities that process Tanner crab also process Bristol Bay red king crab and Bering Sea *opilio*. Crab processing tends to be labor intensive, requiring relatively large crews. The cost of transporting, housing, and provisioning crews to run crab processing lines at a plant can be high. Processors that are active in other BSAI crab fisheries may be more likely to continue processing in the Tanner crab fisheries to help maintain a consistent amount of crab available for processing at the facility (see Section 2.9.2 of the Analysis for more information).

Third, processors are likely to maintain processing facilities near the fishing grounds. Proximity to the fishing grounds may help prevent or reduce deadloss, dead crab landed at the dock, which is associated with increased transit time between the fishing grounds and offload. Additionally, proximity to the fishing grounds can help harvesters maximize their efficiency and prevent the need to spend significant time transiting to and from processing facilities for offload. Given these factors, the Council and NMFS concluded that additional consolidation of processing activity in the EBT and WBT fisheries is unlikely under current and projected operations.

The proposed rule would provide a benefit to processors willing to custom process Class A IFQ for EBT and WBT crab, and those IPQ holders that do not own processing facilities and must have their crab custom processed. The proposed custom processing arrangement exemption for EBT and WBT IPQ crab would avoid the adverse economic impacts created by the 30 percent IPQ use cap for Tanner crab fisheries to IPQ holders that own and operate processing facilities. This proposed rule would also benefit those IPQ holders that do not have processing facilities since their IPQ could be custom processed by an existing facility and their custom processing arrangement would not count against the 30 percent IPQ use cap (see Section 2.9.2 of the Analysis for further information).

This proposed rule is expected to benefit harvesters who hold Class A IFQ for EBT and WBT crab. Without this proposed rule, harvesters with EBT or WBT Class A IFQ likely would be unable to fully harvest allocations provided to them due to IPQ use cap limitations imposed on IPQ holders and the three existing processors that receive EBT and WBT crab. This proposed rule would allow Class A IFQ holders in the EBT and WBT crab fisheries to fully harvest their IFQ allocations, because those Class A IFQ holders who match with IPQ holders that do not own processing facilities would be able to deliver their IFQ to a processing facility that has a custom processing arrangement with that IPQ holder.

The effects of this proposed rule on communities and community sustainability are expected to be beneficial. This proposed rule would continue the delivery of EBT and WBT Class A IFQ crab to processors at facilities owned by the Maruha-Nichiro Corporation, Trident Seafoods, or Unisea Seafoods in BSAI communities. This would

increase economic activity, the amount of income generated, and the amount of tax revenues in communities where existing processing facilities are located relative to not creating an exemption. Therefore, the effects of the proposed rule would be beneficial overall to communities with processors with EBT and WBT IPQ as compared with no action. However, if further consolidation occurs under this proposed action, companies may suspend crab processing at facilities in particular communities, causing adverse economic impacts on communities that lose Tanner crab processing activity. As explained above, there are several factors that make further consolidation unlikely.

Although this proposed rule would provide a benefit to the existing three processors with processing facilities, this rule would not preclude the ability for new, unaffiliated processing companies to enter the EBT and WBT fisheries, establish custom processing arrangements with IPQ holders, and process EBT and WBT crab. Section 2.9.2 of the Analysis provides more detail on the potential for new unaffiliated processing companies to enter the EBT and WBT crab fisheries.

Proposed Regulation to Make a Minor Clarification

This proposed rule would also modify § 680.42(b)(7)(ii)(B) to clarify the meaning of the phrase “on the effective date of this rule” that occurs in § 680.42(b)(7)(ii)(B). The phrase “on the effective date of this rule” in § 680.42(b)(7)(ii)(B) refers to the effective date of the regulations that implemented Amendment 27 to the Crab FMP and that added § 680.42(b)(7)(ii)(B) to the regulations (74 FR 25449, May 28, 2009). Regulations implementing Amendment 27 to the Crab FMP were published on May 28, 2009, and became effective on June 29, 2009. The phrase “on the effective date of this rule” was inadvertently left in the regulatory text and not replaced with the actual effective date of

the rule. This proposed rule would revise the phrase “on the effective date of this rule” to read “on June 29, 2009” to reduce any confusion about the applicable date for the requirements in § 680.42(b)(7)(ii)(B). This minor correction does not substantively change the intent or effect of § 680.42(b)(7)(ii)(B).

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 47, the Crab FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. Copies of the IRFA are available from NMFS (see **ADDRESSES**).

The IRFA describes this proposed rule, why this rule is being proposed, the objectives and legal basis for this proposed rule, the type and number of small entities to which this proposed rule would apply, and the projected reporting, recordkeeping, and other compliance requirements of this proposed rule. It also identifies any overlapping, duplicative, or conflicting Federal rules and describes any significant alternatives to this proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statutes and that would minimize any significant adverse economic

impact of this proposed rule on small entities. The description of this proposed rule, its purpose, and its legal basis are described in the preamble and are not repeated here.

Number and Description of Small Entities Regulated by this Proposed Rule

For Regulatory Flexibility Act purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

The Small Business Act (SBA) has established size criteria for all other major industry sectors in the United States, including fish processing businesses. On January 26, 2016, the SBA issued a final rule revising the small business size standards for several industries, effective February 26, 2016 (81 FR 4469). The final rule modified the size standard for "seafood product preparation and packaging" (NAICS code 311710) that applies to seafood processors. The final rule also modified the definition of a small entity operating as a seafood processor to include all entities that are independently owned and operated, not dominant in their field of operation, and have a combined annual employment of fewer than 750 or fewer persons on a full-time, part-time, temporary, or other basis, at all their affiliated operations worldwide.

The entities directly regulated by this action are those entities that process EBT and WBT crab. It does not include entities that harvest Class A IFQ EBT and WBT crab.

From 2012 through 2014, there were no processors considered small entities that would have been directly regulated by the proposed action.

This action would also directly regulate registered crab receivers (RCRs) as all Program crab must be received by an RCR. Some RCRs are the same entities that process Tanner crab, and others are those that have their Tanner crab custom processed. In 2015/2016, there were 10 RCRs that received Tanner crab, seven of which are considered large entities due to their affiliations with large seafood processing companies. The remaining three are considered small entities because they are not-for-profit organizations.

Recordkeeping and Reporting Requirements

This proposed action would not require any new recordkeeping and reporting requirements, or any modification of existing requirements.

Federal Rules that may Duplicate, Overlap, or Conflict with this Proposed Rule

No relevant Federal rules have been identified that would duplicate, overlap, or conflict with this proposed rule.

Description of Significant Alternatives to this Proposed Rule that Minimize Economic Impacts on Small Entities

The action alternative would allow the full harvest and processing of the Tanner crab total allowable catch. This action is not expected to have negative economic impacts on the small entities directly impacted by this action. The Council also considered a limited duration option which would have created a temporary rule to provide a fix for the near term, but would require the Council to take further action if it intended to create a more long-term revision. The Council did not select this option as it

already has the ability to examine processing activity in the Tanner crab fishery at any time and take future action on this subject. This option would not have had less economic impact on small entities as compared to the proposed rule as the proposed rule is not expected to have negative impacts.

List of Subjects in 50 CFR Part 680

Alaska, Reporting and recordkeeping requirements.

Dated: September 19, 2016.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 680 is proposed to be amended as follows:

**PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE
OFF ALASKA**

1. The authority citation for 50 CFR part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

2. In § 680.42, revise paragraphs (b)(7)(ii) introductory text, and (b)(7)(ii)(A) and (B) to read as follows:

§ 680.42 Limitations on use of QS, PQS, IFQ, and IPQ.

* * * * *

(b) * * *

(7) * * *

(ii) The IPQ crab meets the conditions in paragraphs (b)(7)(ii)(A) and (B) of this section or the IPQ crab meets the conditions in paragraph (b)(7)(ii)(C) of this section:

(A) The IPQ crab is:

(1) BSS IPQ crab with a North region designation;

(2) EAG IPQ crab;

(3) EBT IPQ crab;

(4) PIK IPQ crab;

(5) SMB IPQ crab;

(6) WAG IPQ crab provided that IPQ crab is processed west of 174 degrees west longitude;

(7) WAI IPQ crab; or

(8) WBT IPQ crab.

(B) That IPQ crab is processed at:

(1) Any shoreside crab processor located within the boundaries of a home rule, first class, or second class city in the State of Alaska in existence on June 29, 2009; or

(2) Any stationary floating crab processor that is:

(i) Located within the boundaries of a home rule, first class, or second class city in the State of Alaska in existence on June 29, 2009;

(ii) Moored at a dock, docking facility, or at a permanent mooring buoy, unless that stationary floating crab processor is located within the boundaries of the city of Atka

in which case that stationary floating crab processor is not required to be moored at a dock, docking facility, or at a permanent mooring buoy; and

(iii) Located within a harbor, unless that stationary floating crab processor is located within the boundaries of the city of Atka on June 29, 2009, in which case that stationary floating crab processor is not required to be located within a harbor.

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